



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 4, 1998

Ms. Joni M. Vollman  
Assistant General Counsel  
Harris County District Attorney  
District Attorney's Building  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR98-0338

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112163.

The Harris County District Attorney (the "district attorney") received a request for copies of the files in Case Nos. 75-4217, Teson James Toops, and 75-4218, Curtis Campbell, date of offense, April 26, 1997. You state that some of the documents responsive to the request have been made available to the requestor, but assert that the remaining information is excepted from disclosure pursuant to sections 552.101, 552.108 and 552.117 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: . . . (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You state that the materials in Exhibit A are documents that constitute the work product of the district attorney's prosecutors. Upon review of the information submitted in Exhibit A, we conclude that it was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or represents the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude you may withhold the information in

Exhibit A, as well as the handwritten notes in Exhibit C, under 552.108(a)(3). We note, however, that Exhibit A contains basic information about an arrested person, arrest or a crime. See Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. See generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.3d 177 (Tex. Civ. App.--Houston [14<sup>th</sup> dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Therefore, you must release basic information from Exhibit A.

Additionally, you assert that section 552.117 of the Government Code excepts from disclosure the information in Exhibit B containing a peace officer's pager number. Section 552.117 provides for the confidentiality of the home addresses, home telephone numbers, and social security numbers of peace officers. Section 552.117 also protects from disclosure information that reveals that the individual has family members. In Open Records Decision Number 506 (1988) at 5, this office stated that one purpose of section 552.117 is to protect public officials and employees from being harassed while at home. We agree that pager numbers of peace officers may be withheld from disclosure.<sup>1</sup>

You also seek to withhold criminal history information ("CHRI") contained in Exhibit C under section 552.101. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. See also Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. See generally *id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. See Open Records Decision No. 565 (1990). Further, CHRI obtained from DPS or any other Texas criminal

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<sup>1</sup>We assume for purposes of granting section 552.117 that the pager was purchased and privately owned by the peace officer. See Open Records Decision No-506 (1988) at 5-6 (statutory predecessor to section 552.108 protects from required public disclosure cellular mobile phone numbers assigned to public and private vehicles used by county officials and employees with specific law enforcement responsibilities; predecessor to section 552.117 does not apply to cellular mobile phone numbers paid for by county and intended for use at work for county business; different considerations apply if employee pays for purchase and installation of and calls to and from mobile phone in his private vehicle and simply seeks reimbursement for calls made on county business).

justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

Finally, you also assert that medical records contained in Exhibit D are confidential by law under the Medical Practice Act ("MPA"), section 5.08 of Article 4495b of the Texas Revised Civil Statutes in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by other statutes. The MPA protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The information submitted appears to be hospital records. Hospital treatment is routinely conducted under the supervision of physicians. Since the file is the result of a hospital visit, all the documents in Exhibit D relating to diagnosis and treatment would constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Such records may only be released in accordance with section 5.08 of the MPA, V.T.C.S. art. 4495b. *See* Open Records Decision No. 546 (1990).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 112163

Enclosures: Submitted documents

cc: Ms. Rebecca L. Reitz  
Gay & Reitz, P.C.  
1331 Gemini, Suite 290  
Houston, Texas 77058  
(w/o enclosures)